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FILED
October 16, 2009
CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
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1	Mark Gorton (State Bar No. 99312) mgorton@mhalaw.com Stephen M. Lerner (State Bar No. 176688) slerner@mhalaw.com		
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6	Attorneys for Plaintiff		
	THE ONE TREE GROUP, INC.		
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8	UNITED STATES BANKRUPTCY COURT		
9	EASTERN DISTRICT OF CALIFORNIA		
10	(SACRAMENTO DIVISION)		
11	In Re:	) Case No. 09-23892-B-7	
12	TIMOTHY JOSEPH SCHMIDT and	) Chapter 7	
13	JANET LOUISE RUSTICI,	)	
	Debtors.	ý	
14		) )	
15	THE ONE TREE GROUP, INC.	Ádv. No. 09-02493-B	
16	Plaintiff,	DISCOVERY PLAN	
17	V.	<i>)</i> )	
18	TIMOTHY JOSEPH SCHMIDT and	Hon. Thomas Holman	
10	JANET LOUISE RUSTICI	<i>)</i> )	
19		)	
20	Defendants.	) )	
21	Plaintiff The One Tree Group ("Plaintiff"), by and through its respective attorneys of record,		
22	hereby submits the following "Discovery Plan" in compliance with Rule 7026 of the Federal Rules		
23	of Bankruptcy Procedure and Rule 26(f)(3) of the Federal Rules of Civil Procedure.		
24	Meet and Confer with Defendants. Plaintiff's counsel attempted to meet and confer with		
25	Defendants Timothy Schmidt and Janet Rustici (collectively "Defendants") regarding the Discovery		
26	Plan, but his messages of October 13, 2009 at 2:54 p.m. and October 14, 2009 at 10:30 a.m. were not		

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Discovery Plan

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returned. Counsel attempted to reach Defendants by leaving messages for them at (775) 583-8861,

the number listed by Defendants in the caption on their Response to Adversary Proceeding filed with

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the Court on or about August 27, 2009.

1. <u>Rule 26(a) Initial Disclosures</u>. Plaintiff proposes that the Court set the deadline for exchanging initial disclosures as required by Rule 26(a) for a date on or about 30 days after the Status Conference. The Continued Status Conference currently is set for November 4, 2009 at 9:30 a.m.

## 2. <u>Scope and Timing of Discovery.</u>

- a. Plaintiff intends to propound interrogatories, requests for production of documents and requests for admissions within 30 days after the parties' deadline to exchange initial disclosures.
- b. Plaintiff intends to take the oral depositions of both Defendants within 90 days after the parties' deadline to exchange initial disclosures.
- c. Plaintiff intends to take the oral depositions of third-party witnesses who may possess information pertaining to Defendants' fraudulent conduct within 120 days after the parties' deadline to exchange initial disclosures. 120 days are needed since the identity of some or all of these third-party witnesses will be disclosed in Defendants' initial disclosures or responses to Plaintiff's discovery requests.
- 3. <u>Discovery Limitations</u>. Plaintiff is informed and believes that many documents responsive to Plaintiff's requests for production have been seized by and remain in the possession of the Butte County Sheriff's Department. If correct, this factor may influence the scope and timing of discovery.
- 4. <u>Claims of Privilege/Protection</u>. Plaintiff anticipates that Defendants will object to producing information pertaining to XtremeStructures, Inc., the president and sole shareholder of which is Timothy Schmidt, on grounds that requested information is privileged, trade secret and proprietary, all of which Plaintiff disputes since information possessed by XtremeStructures, Inc. directly pertains to Defendants' activities that Plaintiff alleges were and are fraudulent.

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1	5.	Other Orders.	Plaintiff is not presently aware of any other orders that should be made
2	at this tim	e.	
3	DATED:	October 16, 2009	
4			McDONOUGH HOLLAND & ALLEN PC Attorneys at Law
5			Attorneys at Law
6			
7			By: <u>/s/ Stephen M. Lerner</u> STEPHEN M. LERNER
8			Attorneys for Plaintiff THE ONE TREE GROUP,
9			INC.
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